Faulk, Camilla

From: Paul T. Ferris [ptferris@washrecord.com]
Sent: Thursday, January 28, 2010 5:02 PM
To: Faulk, Camilla
Subject: Comment on proposed revision of CrRLJ 3.2 (elimination of bail forfeitures)

Clerk of the Supreme Court
State of Washington
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Olympia, WA 98504-0929

I have been practicing criminal defense for 20 years, with 10 of those years carrying a public defender caseload. For much of the past five years, my practice has primarily consisted post-conviction relief: restoring civil rights, vacating/sealing records and helping clients navigate their way through the long lasting consequences of criminal records - arrests, convictions and bail forfeitures.

The published comment to the proposed revision suggests to me that the writer (each, if more than one) is not someone who represents criminal defendants; rather, the comments raised indicate there is more concern with data management and a desire to have court procedure conform to existing record management, if not simply a distaste for bail forfeitures. I would offer the following counterpoints:

- Bail forfeitures are no more antiquated (implying "no longer useful") than any other disposition.
- The utility, pragmatism and economy of bail forfeitures far outweigh the inconvenience of adapting procedures and technology (AOC) to serve the system of justice. Technological practices should not dictate how justice is served; rather, AOC should modify its data systems to adequately reflect how cases are handled in the courtroom.
- The legislature **HAS** addressed bail forfeitures; the legislature acknowledges the distinction and specifies when a forfeiture shall have the same effect as a conviction.
- It has long been held by courts (and by every judge and lawyer I know, including prosecutors) that a forfeiture is not a conviction. It is not confusing to those who rpresent parties in a criminal case. It appears that the issue is *difficult* for those who try to mold practices to conform with data management systems.
- Many jurisdictions have similar dispositions, e.g. "no contest" pleas, which constitute a violation. Bail forfeitures permit an agreed disposition where parties may be at an impasse. Bail forfeitures are, and should continue to be, distinguished from *Alford* pleas.
- Sadly, our local clerk made an inquiry about how to enter a bail forfeiture in SCOMIS. An AOC IT staffer told her it couldn't be done because the system didn't have a code for that disposition. This was an absurd response, suggesting that cases must be disposed of in a manner that conforms with the way cases are tracked. Superior courts are constitutional courts and do not require legislative or administrative authority to administer justice in all disputes.
- AOC's programs can be modified to do anything. **Anything**. Change the AOC software rather than eliminate a widely used and accepted practice of resolving cases in a cost effective manner.

The beginning of the published comment in support of the revision acknowledges that bail forfeitures are used. They are used frequently in varying types of cases and for varying reasons because prosecutors, defendants and judges believe they are an effective, fair, and just resolution. If a judge disagrees, a forfeiture will not be accepted.

Bail forfeitures ....

1. reduce trial backlogs
2. avoid unnecessary use of probation resources (which are habitually used on petty criminal charges that result in convictions)
3. constitute a finding that a violation (infraction or crime) was committed and, if the legislature provides, result in license suspensions or other consequences
4. reduce costs for all parties, yet allow recovery of costs deemed appropriate by the court

The problem is not bail forfeitures; rather, the problem is how new systems have failed to recognize bail forfeitures. All of the perceived problems identified in the comment have solutions that do not require elimination of this widely used and well established disposition that enhances the criminal justice system.

Thank you for your consideration.

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